

Notice of Allowability	Application No.	Applicant(s)	
	10/599,682	ISSBERNER ET AL.	
	Examiner	Art Unit	
	YATE' K. CUTLIFF	1622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to RCE filed 10/17/2011.
2. ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on ____; the restriction requirement and election have been incorporated into this action.
3. ☒ The allowed claim(s) is/are 3, 5, 11, 13 - 21, 23 & 24.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: ____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date ____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date ____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).**
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|--|
| 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date <u>12/19/2011</u> . |
| 3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date <u>10/17/2011</u> | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other ____. |

/YATE' K. CUTLIFF/
Primary Examiner, Art Unit 1622

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on October 17, 2011 has been entered.

Information Disclosure Statement

2. The information disclosure statement (IDS) submitted on October 17, 2011 was filed after the mailing date of the Notice of Allowance on October 6, 2011. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

3. The Information Disclosure Statement of October 17, 2011, did not include the name of the patentee or applicant for reference JP 50-008804. Examiner made a correction to reflect this information based on the attached English translation.

EXAMINER'S AMENDMENT

4. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided

by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Donna R. Fugit on December 19, 2011.

The application has been amended as follows:

In the claims:

Claim 11, delete the current version and replace it with the following:

11. A cosmetic and/or pharmaceutical composition comprising: a fatty acid ester mixture of pentaerythritol, wherein the fatty acid has 6 to 22 carbon atoms, the esters have a ratio by weight of C16/C18 fatty acid of about 0.7 to 0.9, and wherein said ester mixture contains less than 0.3% by weight of esters containing C17 fatty acid acyl groups, and has a melting point of at least 30 °C, with a percentage content of (a) about 12% to about 19% by weight monoesters, (b) about 25% to about 35% by weight diesters, (c) about 30% to about 40% by weight triesters, and (d) tetraesters.

Claim 21, delete the current version and replace it with the following:

21. The fatty acid ester mixture of claim 5, wherein the fatty acid contains 6 to 22 carbon atoms and comprises unbranched fatty acids.

Allowable Subject Matter

5. Claims 3, 5, 11, 13 – 21, 23 and 24 are allowed.

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6. The following is an examiner's statement of reasons for allowance: none of the prior art references of record teach or suggest a fatty acid ester mixture of pentaerythritol, wherein the fatty acid has 6 to 22 carbon atoms, the esters have a ratio by weight of C16/C18 fatty acid of about 0.7 to 0.9, and wherein said ester mixture contains less than 0.3% by weight of esters containing C17 fatty acid acyl groups, and has a melting point of at least 30°C, with a percentage content of (a) about 12% to about 19% by weight monoesters, (b) about 25% to about 35% by weight diesters, (c) about 30% to about 40% by weight triesters, and (d) tetraesters. Also, the claimed fatty acid ester mixture, when included in a cosmetic and/or pharmaceutical composition, has improved sensory properties and phase stability.

7. JP 50-008804 (Applicant: Nippon Steel Corp.) is cited for teaching at Table 1 composition 3 with a pentaerythritol fatty acid ester mixture of monoesters 20%, di-ester 30%, tri-ester 40% and tetra-ester 10%. However, the English translation of JP 50-008804 teaches that Table 1 composition 3 has a pentaerythritol fatty acid ester mixture of monoesters 20%, di-ester 40%, tri-ester 30% and tetra-ester 10%. (pages 11 and 12 of the English translation). Applicant's claim 5 teaches monoesters 12 to 19%, di-ester 25 to 35%, tri-ester 30 to 40% and tetra-ester. As such, there is no overlap in the amount of di-ester of Applicant's claimed fatty acid ester mixture with composition 3 of the prior art. Further, none of the compositions of Table 1 of JP 50-008804 contain a pentaerythritol fatty acid ester mixture that overlaps entirely with Applicant's claimed ester mixture. Additionally, the reference does not teach the C16/C18 fatty acid ratio of about 0.7 to 0.9.

JP 56-152801 (Applicant Henkel KGAA) is cited for the teaching of Examples 4 and 5 in the Table on page 5 of the reference. However, examples 4 and 5 refer to a reaction medium for the polymerization process of Henkel; and a review of corresponding EP 0035729, page 11 shows that the compounds of example 4 and 5 do not include the C16/C18 fatty acid ratio in its ester.

Therefore, JP 50-008804 (Applicant: Nippon Steel Corp.) nor JP 56-152801 (Applicant Henkel KGAA) teach or suggest a motivation for Applicant claimed fatty acid ester mixture of pentaerythritol.

8. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to YATE' K. CUTLIFF whose telephone number is (571)272-9067. The examiner can normally be reached on M-TH 8:30 a.m. - 5:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew D. Kosar can be reached on (571) 272 -0913. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/YATE' K. CUTLIFF/
Primary Examiner, Art Unit 1622